

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

WENDELL WALLACE,
Plaintiff,

v.

C/O MCPHERSON, et al.
Defendants.

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CIVIL ACTION NO. 24-CV-5712

ORDER

AND NOW, this 16th day of January, 2025, upon consideration of Plaintiff Wendell Wallace's Motion to Proceed *In Forma Pauperis* (ECF No. 1), Prisoner Trust Fund Account Statement (ECF No. 4), and *pro se* Complaint (ECF No. 2), it is **ORDERED** that:

1. Leave to proceed *in forma pauperis* is **GRANTED** pursuant to 28 U.S.C. § 1915.
2. Wendell Wallace, #CQ-0981, shall pay the full filing fee of \$350 in installments, pursuant to 28 U.S.C. § 1915(b), regardless of the outcome of this case. The Court directs the Superintendent of SCI Greene or other appropriate official to assess an initial filing fee of 20% of the greater of (a) the average monthly deposits to Wallace's inmate account; or (b) the average monthly balance in Wallace's inmate account for the six-month period immediately preceding the filing of this case. The Superintendent or other appropriate official shall calculate, collect, and forward the initial payment assessed pursuant to this Order to the Court with a reference to the docket number for this case. In each succeeding month when the amount in Wallace's inmate trust fund account exceeds \$10.00, the Superintendent or other appropriate official shall forward payments to the Clerk of Court equaling 20% of the preceding month's income credited to Wallace's inmate account until the fees are paid. Each payment shall refer to the docket number for this case.

3. The Clerk of Court is **DIRECTED** to send a copy of this Order to the Superintendent of SCI Greene.

4. The Complaint is **DEEMED** filed.

5. For the reasons stated in the Court's Memorandum, Wallace's claims against all Defendants in their official capacity and his claims against Defendants Major Benner, Commissioner Blanche Carney, and C/O Green in their individual capacity are **DISMISSED WITHOUT PREJUDICE** for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).

6. The Clerk of Court is **DIRECTED** to send Wallace a blank copy of the Court's standard form complaint for prisoners to use to file a complaint bearing the above civil action number.

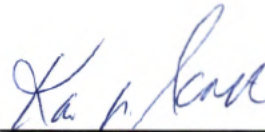
7. Wallace is given thirty (30) days to file an amended complaint in the event he can allege additional facts to state a plausible claim as to those claims that have been dismissed. Any amended complaint shall identify all defendants in the caption of the amended complaint in addition to identifying them in the body of the amended complaint, shall state the basis for Wallace's claims against each defendant, and shall bear the title "Amended Complaint" and the case number 24-5712. If Wallace files an amended complaint, his amended complaint must be a complete document that includes all of the bases for Wallace's claims, including claims that the Court has not yet dismissed if he seeks to proceed on those claims. For example, if Wallace files an amended complaint, he must include in that amended complaint the allegations supporting his failure to protect claim against C/O McPherson, his failure to intervene claim against C/O Henry, and his due process claims against Sgt Black and the Hearing Examiner, which claims have not been dismissed, if Wallace seeks to proceed on those claims. Claims that are not included in the amended complaint will not be considered part of this case. When drafting his amended

complaint, Wallace should be mindful of the Court's reasons for dismissing his claims as explained in the Court's Memorandum. Upon the filing of an amended complaint, the Clerk shall not make service until so **ORDERED** by the Court.

8. If Wallace does not file an amended complaint the Court will direct service of his initial Complaint on Defendants C/O McPherson, C/O Henry, Sgt Black only, and the Hearing Examiner. Wallace may also notify the Court that he seeks to proceed on these claims rather than file an amended complaint. If he files such a notice, Wallace is reminded to include the case number for this case, 24-5712.

9. The time to serve process under Federal Rule of Civil Procedure 4(m) is **EXTENDED** to the date 90 days after the Court issues summonses in this case if summonses are issued.

BY THE COURT:

A handwritten signature in blue ink, appearing to read "Kai N. Scott", is written over a horizontal line.

KAI N. SCOTT, J.